

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

v.

Case No. 1:08-cv-907
HON. ROBERT J. JONKER

PEOPLEMARK, INC.,

Defendant.

**MOTION FOR SUMMARY JUDGMENT; ALTERNATIVELY
FOR DISMISSAL UNDER *FEDERAL RULE CIVIL PROCEDURE* 37 (b)(2)**

Defendant Peplemark, Inc. ("Peplemark") hereby moves for summary judgment pursuant to R. 56 Fed.R.Civ.P. in this case on the grounds that there is no genuine issue as to any material fact and that Peplemark is entitled to a judgment as a matter of law. Additionally, Peplemark moves that the EEOC's complaint be dismissed and Peplemark be awarded its fees and expenses as a sanction under Fed.R.Civ.P. 37(b)(2).

The Court is respectfully referred to the Memorandum in Support of Defendant Peplemark's Motion for Summary Judgment filed herewith of even date, together with: (1) the Declaration of Malcolm S. Cohen, Ph. D. and the expert report of Malcolm S. Cohen. Ph. D.; and (2) excerpts of sworn deposition testimony of Jerry Thomas, Paul Brown, Shaun Cady, and Joseph Taylor. Excerpts of the depositions of Terry Duff and Jackie Patterson and also included because they are mentioned in Dr. Cohen's report. Finally, the Court is referred to the Certificate of Consultation of Edward Young.

Respectfully submitted,

s/Edward R. Young

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CERTIFICATE OF SERVICE

The undersigned certifies that on February 25, 2010, the foregoing was served on the parties listed below via electronic mail and first class mail, postage prepaid:

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